

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
KEN CLARK DBA	)	
PEAK COMMUNICATIONS, INC.	)	Case No. 98F006
	)	
Finder's Preference Request	)	
For Station WNQL565	)	
San Diego, California	)	
	)	

**ORDER**

**Adopted: March 22, 2000**

**Released: March 23, 2000**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. We have before us a petition for reconsideration (Petition)<sup>1</sup> submitted on September 28, 1999, by Ken Clark dba Peak Communications, Inc. (Peak), seeking reconsideration of the denial of its finder's preference request (Request) by the Chief, Policy and Rules Branch (Branch), Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.<sup>2</sup> On August 23, 1999, the Branch denied Peak's finder's preference request targeting San Diego, California Station WNQL565, licensed to Cox Communications, Inc. (Cox). For the reasons stated below, Peak's Petition is dismissed.

2. On February 11, 1998, Peak filed the Request targeting Cox's authorization to operate Station WNQL565.<sup>3</sup> Peak alleged that Cox had failed to timely place Station WNQL565 in operation, in violation of Section 90.155 of the Commission's Rules, and failed to continuously operate Station WNQL565, in violation of Section 90.157 of the Commission's Rules.<sup>4</sup> The Branch denied Peak's Request on August 23, 1999.<sup>5</sup> On September 28, 1999, six days after the filing deadline in which to file a petition for reconsideration, Peak submitted its Petition.

<sup>1</sup>Petition for Reconsideration (received Sept. 28, 1999).

<sup>2</sup>Letter from John J. Borkowski, FCC, to Ken Clark dba Peak Communications, Inc. (dated Aug. 23, 1999).

<sup>3</sup>Finder's Preference Request (filed Feb. 11, 1998).

<sup>4</sup>Id. (citing 47 C.F.R. §§ 90.155, 90.157).

<sup>5</sup>Supra note 2.

3. Section 405 of the Communications Act of 1934, as amended, sets forth the requirements that a petitioner must satisfy before we may consider a petition for reconsideration.<sup>6</sup> Section 405, as implemented by Section 1.106(f) of the Commission's Rules, requires a petition for reconsideration to be filed within thirty days from the release date of the Commission's action.<sup>7</sup> The thirty-day period for filing a petition for reconsideration as determined under Section 1.4(b)(5) of the Commission's Rules,<sup>8</sup> ended on September 22, 1999. Because the Petition was not received within this period, we conclude that the petition must be dismissed.

4. Accordingly, IT IS ORDERED THAT pursuant to Sections 4(i), 5(c) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration submitted by Ken Clark dba Peak Communications, Inc., on September 28, 1999, IS DISMISSED.

5. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau

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<sup>6</sup>47 U.S.C. § 405 provides that a petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of.

<sup>7</sup>47 C.F.R. § 1.106(f). See *Metromedia, Inc., Memorandum Opinion and Order*, 56 FCC 2d 909, 909-910 (1975) (dismissing as untimely petition for reconsideration filed one day late); *Spectrum Communications, L.C., Order*, 14 FCC Rcd 13,182 (1999) (affirming the dismissal of a petition for reconsideration filed one day late).

<sup>8</sup>47 C.F.R. § 1.4(b)(5) provides that the date appearing on a document mailed to persons affected by an action is the controlling date when computing time for seeking reconsideration, if the document was neither published in the Federal Register nor released, and if a descriptive document entitled "Public Notice" was not released. In the instant case, the date to be used for computing the time in which to file a reconsideration was August 23, 1999, the date of the denial action mailed to Peak.